

FACT SHEET
Uniform Tribal Gaming Regulation CGCC-8
Minimum Internal Control Standards
California Gambling Control Commission
March 27, 2008

What is CGCC-8?

- As a result, in part, of the 2006 federal Court of Appeals decision (CRIT v. NIGC) which held that the NIGC did not have the authority under the Indian Gaming Regulatory Act to enforce federal regulations for minimum internal controls (MICS) over Class III gaming, the California Gambling Control Commission (Commission) has taken a more active oversight role related to MICS for Class III gaming operations.
- The Commission drafted proposed regulation CGCC-8 with input from Tribes in an attempt to cooperatively establish uniform procedures and standards to assist the State Gaming Agency (SGA) in meeting its compliance responsibilities under the Compact related to Class III gaming operations. CGCC-8 establishes the NIGC MICS as a baseline for Tribal gaming operation internal control standards, by requiring that Tribal internal control standards meet or exceed the NIGC MICS. Using the NIGC MICS as a baseline standard ensures consistency and uniformity, while taking into account the size of gaming operations. Further, since Tribes have been using this standard for years, this approach eliminates duplication and unnecessary development of new rules, regulations, or specifications.
- Since the State already has significant compliance oversight authority under the Compact, CGCC-8 would not expand the State's authority - it would be a method of *facilitating* the existing authority. It provides a process for compliance oversight, including a process for dispute resolution between the Tribe and the State Gaming Agency (SGA).
- It is important to note that CGCC-8 does not change the role of Tribal Gaming Agencies under the Compacts as it relates to establishing and enforcing rules, regulations, procedures and specifications regarding the Class III gaming operation. Under CGCC-8 Tribal Gaming Agencies would continue to have the primary role.

What is the Status of CGCC-8?

- In the spring of 2007, Commission staff presented the concept of CGCC-8 to the Tribal-State Regulatory Association (Association). Several drafts have been presented to the Association and a Task Force was appointed by the Association to review the proposal. The Task Force has held several meetings and members provided the Commission with alternative language.
- Commission staff incorporated many of the language suggestions from Association members and developed a final draft proposal for consideration by the Commission at the March 27, 2008 meeting, pursuant to Section 8.4.1 of the Compact.
- If the Commission approves the proposed CGCC-8, the text will be forwarded for consideration by the Association at its May 7, 2008 meeting, pursuant to Section 8.4.1 of the Compact. That meeting will constitute the "initial" reading of the text under the Association's Protocol for Submission of Proposed State Regulatory Standards to the Association (Protocol). Pursuant to the Protocol, no vote may be taken at this meeting. At least one additional meeting must be held between 30 and 90 days after the initial meeting, for the purposes of voting. An extension of 30 days may be granted with a majority vote. A vote is required to be taken by the Association unless the SGA withdraws CGCC-8 or if notice is not properly provided.
- If the Association approves CGCC-8, it must be submitted to the Tribes for comment and the Commission must consider any comments before final adoption. If the Association disapproves CGCC-8, it shall not be submitted to the Tribes for comment unless it is re-adopted by the SGA, with a detailed, written response to the Association's objections.

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What are the National Indian Gaming Commission (NIGC) Minimum Internal Control Standards (MICS)?

- The NIGC Federal MICS are rules (federal regulations) promulgated by the National Indian Gaming Commission (NIGC), pursuant to the Indian Gaming Regulatory Act (IGRA), consisting of internal control systems and standards intended to be the management procedures used to protect the operational integrity of Class II and Class III games, account for and protect gaming assets and revenues and assure the reliability of the financial statements for Class II and Class III Indian gaming operations. Internal control systems are intended to establish a regulatory framework for Indian gaming enterprises' governing boards, management and other personnel. Under the Federal MICS, each Tribal gaming regulatory authority was required to establish and implement tribal internal controls that equaled or exceeded the Federal MICS. Over the past few years, the NIGC MICS have become the industry standard for Tribal gaming.
- As a result of federal court decisions, the NIGC no longer has the authority to promulgate or enforce the federal MICS as they relate to Class III gaming. The Court pointed out that IGRA directs Tribes and States to negotiate the regulatory roles for Class III gaming through Tribal-State Compacts.

What authority does the California Gambling Control Commission have related to MICS?

- As it pertains to Tribal gaming in California, "MICS" is shorthand for the rules, regulations, procedures, standards and specifications for the conduct of gaming operations adopted and enforced by Tribal Gaming Agencies under the Tribal-State Gaming Compacts.
- The Tribal-State Gaming Compacts are negotiated on a government-to-government basis between two sovereign nations - the State and the Tribes. The Compacts set forth the respective regulatory roles of the State and the Tribes and provide extensive authority to the State related to the MICS.
- The California Gambling Control Commission (Commission) has compliance review authority related to MICS. As specified in the Compacts, this includes the authority to review Tribes' gaming facilities and inspect gaming operations or related facility records.
- All of the Compacts include provisions related to MICS – this includes the 1999 Compacts, as well as all of the amended and new Compacts negotiated by Governor Schwarzenegger.

The following Compact sections currently give the Commission ample authority and access to review MICS to ensure that Tribes have complied with their responsibilities under the Compacts:

- ✓ Requires that all gaming activities conducted pursuant to the Compact, must comply with a Gaming Ordinance adopted by the Tribe and approved in accordance with IGRA and must comply with "all rules, regulations, procedures, specifications and standards" adopted by the Tribal Gaming Agency (TGA). Tribal Gaming Ordinances are required to be approved by the Chair of the NIGC (25 U.S.C. 2710 (d)(1)(A)(iii)). The CRIT decision did not rule that such approval was beyond the authority of the NIGC (see Section 6.1 of the 1999 Compact and new Compacts).

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- ✓ Requires the TGA to adopt and enforce rules and regulations or specifications covering a wide variety of regulatory areas that are specified in Sections 8.1.1 through 8.1.14. The topics covered in those sections are also found in the federal MICS (see section 8.1 of the 1999 Compact and section 9.1 of the new Compacts).
- ✓ Requires the TGA to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency is required to adopt and enforce regulations, procedures, and practices (see Section 7.1 of the 1999 Compact and Section 9.1 of the New Compacts). This section should be read with Section 8.1 of the 1999 Compacts.
- ✓ Authorizes State Gaming Agency (SGA) "the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operations or Facility records relating thereto . . ." (Section 7.4 of the 1999 Compact and Section 8.3 of the new Compacts), while recognizing that "the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact.
- ✓ Authorizes "copying of Gaming Operation papers, books, and records" after notice to the TGA (see Section 7.4.3 of the 1999 Compact and Section 8.4 of the new Compacts).
- ✓ Prohibits the State Gaming Agency from being denied "access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact." (See Section 7.4.4 of the 1999 Compact and Section 8.4 of the new Compacts.)